

distributed McCool Chill-it to a representative of Auto Baron and Integrity Auto Sales, S15 W22724 Arcadian Avenue, Waukesha, Wisconsin.

95. At the time of the sale, Auto Baron and Integrity Auto Sales did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

96. Respondent's sale or distribution of McCool Chill-it to a representative of Auto Baron and Integrity Auto Sales is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XV

97. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

98. On or about July 15, 1998, Respondent sold or distributed McCool Chill-it to a representative of Blanchard RV, 411 Eighth Street, Wisconsin Rapids, Wisconsin.

99. At the time of the sale, Blanchard RV did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

100. Respondent's sale or distribution of McCool Chill-it to a representative of Blanchard RV is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XVI

101. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

102. On or about August 26, 1998, Respondent sold or distributed McCool Chill-it to a representative of Car Connection, 3045 Oregon Road, Fitchberg, Wisconsin.

103. At the time of the sale, Car Connection did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

104. Respondent's sale or distribution of McCool Chill-it to a representative of Car Connection is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XVII

105. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

106. On or about July 8, 1998, Respondent sold or distributed McCool Chill-it to a representative of Creative Auto Body, 7030 West National Avenue, West Allis, Wisconsin.

107. At the time of the sale, Creative Auto Body did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

108. Respondent's sale or distribution of McCool Chill-it to a representative of Creative Auto is a violation of 40 C.F.R.

§ 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XVIII

109. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

110. On or about July 15, 1998, Respondent sold or distributed McCool Chill-it to a representative of Diamond Jim's Auto Sales, 5848, South 27th Street, Milwaukee, Wisconsin.

111. At the time of the sale, Diamond Jim's Auto Sales did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

112. Respondent's sale or distribution of McCool Chill-it to a representative of Diamond Jim's Auto Sales is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XIX

113. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

114. On or about July 15, 1998, Respondent sold or distributed McCool Chill-it to a representative of Germantown Auto Body, W161 N11790 Fond du Lac Avenue, Germantown, Wisconsin.

115. At the time of the sale, Germantown Auto Body did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

116. Respondent's sale or distribution of McCool Chill-it to a representative of Germantown Auto Body is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XX

117. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

118. On or about July 1, 1998, Respondent sold or distributed McCool Chill-it to Rio Motors, W 4907 Highway 16, Rio, Wisconsin.

119. At the time of the sale, Rio Motors did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

120. Respondent's sale or distribution of McCool Chill-it to a representative of Rio Motors is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XXI

121. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

122. On or about July 13, 1998, Respondent sold or distributed McCool Chill-it to a representative of Robert Euhardy Auto and Cycle, N 4796 County B, New London, Wisconsin.

123. At the time of the sale, Robert Euhardy Auto and Cycle

did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

124. Respondent's sale or distribution of McCool Chill-it to Robert Euhardy Auto and Cycle is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XXII

125. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

126. On July 24, 1998, Respondent sold or distributed McCool Chill-it to a representative of VIP Auto Sales, 4523 Douglas Avenue, Racine, Wisconsin.

127. At the time of the sale, VIP Auto Sales did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

128. Respondent's sale or distribution of McCool Chill-it to a representative of VIP Auto Sales is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Recordkeeping Only

Count XXIII

129. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

130. During the period June through August 1998, Respondent

sold or distributed McCool Chill-it to a representative of Motor Sport Auto Sales, 667 West State Street, Burlington, Wisconsin.

131. Respondent's records for the sale of McCool Chill-it to a representative of Motor Sport Auto Sales lack the name of the purchaser and the date of sale.

132. Respondent's failure to maintain records which include the name of the purchaser and the date of sale to a representative of Motor Sport Auto Sales is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XXIV

133. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

134. On August 13, 1998, Respondent sold or distributed McCool Chill-it to a representative of Ron's Auto Sales, 5265 South 27th Street, Greenfield, Wisconsin.

135. Respondent's records for the sale of McCool Chill-it to a representative of Ron's Auto Sales lack the name of the purchaser and the date of sale.

136. Respondent's failure to maintain records which include the name of the purchaser and the date of sale to a representative of Ron's Auto Sales is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XXV

137. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

138. On or about July 15, 1998, Respondent sold or distributed McCool Chill-it to a representative of Village Auto Sales, 1650 Velp Avenue, Green Bay, Wisconsin.

139. Respondent's records for the sale of McCool Chill-it to a representative of Village Auto Sales lack the date of sale.

140. Respondent's failure to maintain records which include the date of sale to a representative of Village Auto Sales is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XXVI

141. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

142. In the period June through August 1998, Respondent sold or distributed McCool Chill-it to a representative of RP Motors, Incorporated, 305 North 35th Street, Milwaukee, Wisconsin.

143. Respondent's records for the sale of McCool Chill-it to a representative of RP Motors, Incorporated lack the name of the purchaser and the date of sale.

144. Respondent's failure to maintain records which include the name of the purchaser and the date of sale to a

representative of RP Motors, Incorporated is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XXVII

145. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

146. In July 1998, Respondent sold or distributed McCool Chill-it to Truax Auto Sales and Service, 816 Truax Boulevard, Eau Claire, Wisconsin.

147. Respondent's records for the sale of McCool Chill-it to Truax Auto Sales and Service lack the name of the purchaser and the date of sale.

148. Respondent's failure to maintain records which include the name of the purchaser and the date of sale to Truax Auto Sales and Service is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Proposed Civil Penalty

149. The Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for each violation of Section 608 of the Act and for each violation of regulations promulgated pursuant to Section 608 that occurred on or after January 31, 1997 according to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part

19.

150. Under Section 113(e) of the Act, 42 U.S.C. § 7413(e), the Administrator of U.S. EPA must consider the following factors when assessing an administrative penalty under Section 113(d):

- a. the size of Respondent's business;
- b. the economic impact of the proposed penalty on Respondent's business;
- c. Respondent's full compliance history and good faith efforts to comply;
- d. the duration of the violations alleged in the complaint as established by any credible evidence;
- e. Respondent's payment of penalties previously assessed for the same violations;
- f. the economic benefit of noncompliance;
- g. the seriousness of the violations; and
- h. such other factors as justice may require.

151. Based upon an evaluation of the facts alleged in this Complaint and the factors in paragraph 150 above Complainant proposes that the Administrator of U.S. EPA assess a civil penalty against Respondent of one thousand, seven hundred and eleven dollars (\$1,711). Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Penalty Policy for violations of 40 CFR Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant ("Penalty Policy"), dated June 1, 1994. Enclosed with this Complaint is a copy of the penalty policy.

152. In determining the proposed penalty, Complainant considered the economic benefit that Respondent received from the violations. The penalty must be sufficient to prevent the violator from gaining a monetary benefit from avoiding or delaying the expenditures that are necessary to comply. In this case, because U.S. EPA has determined that the economic benefit to Respondent is less than \$500, Complainant has elected not to include the economic benefit component in the proposed penalty.

153. In evaluating the seriousness of the violation, Complainant considered the importance of the sales restrictions and recordkeeping requirements to achieving the goals of the Act and its implementing regulations. Restricting sales of refrigerant to only certified technicians is necessary to ensure that all technicians are properly trained and in compliance with this regulation. Compliance with recordkeeping requirements is essential to verify compliance with the regulations and aid in enforcement. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.

154. In calculating the proposed penalty, Complainant considered the size of Respondent's business. Respondent's gross sales for 1998 were \$48,468, as reported on its 1998 Federal tax return. Accordingly, the proposed penalty includes a component based on the size of Respondent's business.

155. Complainant considered Respondent's compliance history and its good faith efforts to comply. Because Complainant does not know of any prior citations against Respondent for violating environmental laws, Complainant has not increased the proposed penalty based on this factor.

156. Complainant considered the economic impact of the proposed penalty on Respondent's business. Based on the best information available to Complainant at this time, the proposed penalty reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

157. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Penalty Payment

158. Respondent may pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal

letter to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Brian Barwick, (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

159. The Administrator of U.S. EPA must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing to contest any material fact alleged in the Complaint and to contest the appropriateness of the proposed penalty. To request a hearing, Respondent must specifically make the request in its Answer, as discussed in paragraphs 160 through 164 below. If Respondent requests a hearing, U.S. EPA will hold the hearing and conduct it according to the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (Consolidated Rules), 40 C.F.R. Part 22. Enclosed with the Complaint served on Respondent is a copy

of the Consolidated Rules.

Answer

160. To avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within 30 calendar days after receiving the Complaint. In counting the 30-day time period, the actual date of receipt is not included; Saturdays, Sundays and federal legal holidays are included. If the 30-day time period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.

161. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

162. Respondent's failure to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

163. Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent intends to place at issue; and

- c. whether Respondent requests a hearing as discussed in paragraph 159 above.

164. Respondent must send a copy of the Answer and any documents subsequently filed in this action to Brian Barwick, Assistant Regional Counsel (C-29A), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Barwick at (312) 886-6620.

165. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Administrator of U.S. EPA may issue a default order, after motion, under 40 C.F.R. § 22.17(a). Default by Respondent constitutes an admission of all factual allegations made in the Complaint and a waiver of the right to a hearing. The proposed penalty will be due without further proceedings 60 days after a default order becomes the final order of the Administrator under 40 C.F.R. § 22.27 or § 22.31.

Settlement Conference

166. Whether or not Respondent requests a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Joseph Cardile, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Cardile at (312) 353-2151.

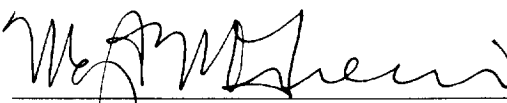
167. Respondent's request for a settlement conference does

not extend the 30 calendar day period to file a written Answer to this Complaint. Respondent may pursue simultaneously the settlement conference and adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference.

Continuing Obligation to Comply

168. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

6/24/99
Date



Margaret Guerriero, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of R & L Marketing, Inc.

Docket No. CAA-5- '99 - 014

CERTIFICATE OF SERVICE

I, Shanee Rucker, hereby certify that a copy of the ADMINISTRATIVE COMPLAINT AND NOTICE OF PROPOSED ORDER ASSESSING A PENALTY was sent via certified mail, return receipt requested, to the respondent by placing it in the custody of the United States Postal Service addressed as follows:

Jerry Lenz, President
R & L Marketing, Inc.
730 South Military Road
Fond du Lac, Wisconsin 54935

The original and a copy was hand-delivered and filed with:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

6/25/99

Date

Shanee Rucker

Shanee Rucker, Secretary
AECAS (MI/WI)

Certified Mail No.

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